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Supreme Court, U.S.
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No. ____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1994

KATHLEEN M. MURPHY,

Petitioner,

v

INTERNATIONAL BUSINESS MACHINES CORPORATION,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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69 pp

I. QUESTIONS PRESENTED

Whether an ERISA Notice that fails to meet the statutory requirement that it set forth in writing the specific and understandable reasons on which the decisionmaker did rely in deciding plan action can be supplemented by factors on which the decisionmaker could have relied.

Whether the failure of an ERISA Notice to set forth in writing the specific and understandable reasons for plan action can be excused because of the employer's reservation of highly discretionary authority under the terms of the summary plan description such that meaningful administrative and Federal court review of the plan action is precluded.

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Petitioner, Kathleen M. Murphy, respectfully prays that a writ of certiorari be issued to review the decision and judgment of the United States Court of Appeals for the Second Circuit entered in this proceeding on May 5, 1994, affirming

the grant of a summary judgment motion of Respondent, International Business Machines, Inc. (IBM), against Murphy's two count complaint.

II. OPINIONS BELOW

The opinion of the Second Circuit is reported as Kathleen Murphy v. International Business Machines, Inc., 23 F.3d 719 (2d Cir. 1994), and is reproduced in Appendix A. The order of the United States District Court for the District of Connecticut endorsing the Magistrate Judge's recommendation and proposed decision has not been reported. It is reproduced in Appendix B. The Magistrate Judge's recommendation and proposed decision has not been reported and is reproduced in Appendix C.

III. JURISDICTION

The opinion and judgment of the Second Circuit on a question of Federal law was entered on May 5, 1994. The jurisdiction of this Court is invoked under 28 U.S.C. section 1254(1) (1988).

IV. STATUTORY AND REGULATORY PROVISIONS INVOLVED

The Employee Retirement Income Security Act, 29 U.S.C. sections 1001 et seq. (1988) (ERISA), provides at 29 U.S.C. section 1133:

> In accordance with regulations of the Secretary, every employee benefit plan shall --
>
> (1) provide adequate notice in writing to any participant or beneficiary whose claim for benefits

> under the plan has been denied, setting forth specific reasons for such denial, written in a manner calculated to be understood by the participant, and
>
> (2) afford a reasonable opportunity to any participant whose claim for benefits has been denied for a full and fair review by the appropriate named fiduciary of the decision denying the claim.

The interpretative regulations promulgated concerning 29 U.S.C. section 1133 are at 29 C.F.R. § 2560.503-1(f) (1993) and provide in part:

> A plan administrator . . . shall provide to every claimant who is denied a claim for benefits written

notice setting forth in a manner calculated to be understood by the claimant:

(1) The specific reason or reasons for the denial;

(2) Specific references to pertinent plan provisions on which the denial is based.

ERISA provides at 29 U.S.C. section 1132:

A civil action may be brought--

(1) by a participant or beneficiary--

(A) . . .

(B) to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to

future benefits under the terms of the plan;

. . . .

ERISA provides at 29 U.S.C. section 1022:

(a)(1) A summary plan description of any employee benefit plan shall be furnished to participants and beneficiaries . . . [and] shall be written in a manner calculated to be understood by the average plan participant, and shall be sufficiently accurate and comprehensive to reasonably apprise such participants and beneficiaries of their rights and obligations under the plan. . . .

V. STATEMENT OF THE CASE

Murphy brought a two-count action against IBM to enforce her rights under an employee welfare benefit plan subject to the ERISA. Jurisdiction in the District Court was based in the right of action provided in 29 U.S.C. section 1132.

IBM employed Murphy as a programmer at its TPF Lab at Danbury, Connecticut, beginning in November 1987. In 1991, IBM initiated an Individual Transition Option (ITO) program which offered a financial incentive to employees wishing to leave IBM's employment. The ITO was an unfunded employee welfare severance benefits plan subject to ERISA. Benefits were to be paid by IBM directly without resort to any special fund.

In August 1991, Murphy applied for ITO benefits but her application was denied. She appealed the denial through established administrative procedures. She wrote three separate letters to IBM asking for understandable and specific reasons for the decision. IBM responded by a July 20, 1992, ERISA Notice from the ITO Plan Administrator. The Notice stated in relevant part that:

> Your [Murphy's] ITO request was disapproved by the ITO Program Project office in Kingston, NY because you were considered a valued employee with essential skills that IBM wanted to retain consistent with our business needs. The ITO Program Project Office determined that

> you were necessary to the efficient operations of the business. Therefore, under the provisions of the Summary Plan Description, you are not eligible for the ITO program.

(Quoted in part at A-5 to A-6.)

Murphy commenced a civil action and challenged the denial of her ITO application in order to learn the specific and understandable reasons for the denial. IBM moved for summary judgment. It introduced into the record a handful of dated evaluations from former peers and customers of Murphy as evidence of the basis for the denial. However, IBM never introduced any evidence nor represented to the court that the ITO Project Office, the decisionmaker according to the ERISA

Notice, knew of the existence of or relied on the evaluations in denying the application.

The District Court referred the matter to the Magistrate Judge. The Magistrate Judge recommended the grant of summary judgment for IBM. As is relevant here, the Magistrate Judge found that IBM relied on the handful of dated evaluations. Appendix at C-6, n.1. (The Magistrate Judge made no finding that the ITO Project Office relied on the evaluations.) The Magistrate Judge held that it was entirely within IBM's discretion to interpret the language of the ITO summary plan description as it did. The opinion did not discuss what that interpretation was or how the statutory requirement for specific and understandable reasons for the denial was met. Appendix at C-12.

The District Court, over objection, approved, adopted, and ratified the recommendation in a one sentence order.

The Second Circuit affirmed the District Court. Contrary to the Magistrate Judge, the Second Circuit did not expressly find that the ITO Project Office relied on the evaluations as the reason for the denial of Murphy's application for benefits. Instead, the Second Circuit stated that the denial was not arbitrary and capricious in light of the handful of dated evaluations and the highly discretionary terms of the ITO plan. It held that the statement of the rationale for the denial was sufficient. Appendix at A-8 to A-9.

VI. REASON FOR GRANTING THE WRIT

THE SECOND CIRCUIT'S HOLDING THAT AN ERISA NOTICE THAT FAILS TO SET FORTH IN WRITING THE SPECIFIC AND UNDERSTANDABLE REASONS FOR PLAN ACTION CAN BE SUPPLEMENTED BY FACTORS ON WHICH THE DECISION-MAKER COULD HAVE RELIED CONFLICTS WITH THE PLAIN LANGUAGE AND THE PURPOSE OF ERISA AND WITH THE ESTABLISHED LAW IN FIVE CIRCUITS THAT REQUIRE THAT THE NOTICE STATE THE FACTORS ON WHICH THE DECISIONMAKER DID RELY. FURTHER-MORE, THE SECOND CIRCUIT'S HOLDING RAISES A MATTER OF GREAT ADMINISTRATIVE IMPORTANCE TO MILLIONS OF PARTICIPANTS IN ERISA PLANS INSOFAR AS IT PERMITS AN

EMPLOYER TO DRAFT AN ERISA PLAN IN SUCH A WAY AS TO PRECLUDE THE CAREFULLY CHOSEN RIGHTS OF PARTICIPANTS TO MEANINGFUL ADMINISTRATIVE AND FEDERAL COURT REVIEW OF PLAN ACTION.

A. The Second Circuit's holding conflicts with a plain ERISA requirement and with the established law in five Circuits.

1. The plain meaning and purpose for the ERISA requirement for specific and understandable reasons for plan action are to protect against unprincipled decisionmaking and to provide proper notice for meaningful review.

A purpose of ERISA is to protect employee welfare benefits. ERISA itself

does not mandate that an employer establish an employee welfare benefit plan and does not inhibit an employer from establishing a plan, however usual or unusual. Once established, though, all plans are subject to ERISA's disclosure obligations. ERISA's disclosure obligations assure the integrity of the decisionmaking relating to the plan. The obligations are neutral whether benefits are paid or not. Rather, they are intended to make the decisionmaking process fair.

In order to protect the fairness of the decisionmaking process, ERISA requires that a decisionmaker provide a participant with specific and understandable reasons in writing for the denial of benefits under any plan subject to ERISA. 29 U.S.C. section 1133 and 29 C.F.R. § 2560.503-1(f). The purpose for this requirement is to

protect a participant from arbitrary or unprincipled decisionmaking by affording the participant with an opportunity to address the accuracy and reliability of the evidence actually considered by the decisionmaker in making its decision, and to produce other evidence for consideration. Halpin v. W.W. Grainger, Inc., 962 F.2d 685, 689 (7th Cir. 1992). In this way, a participant can distinguish between a determination based on proper grounds and one contrary to either the plan (e.g., an improper determination of basic eligibility) or general law (e.g., an improper determination based on gender or age).

A participant's right of review of plan action is only meaningful if the participant is told factors on which the decisionmaker did rely in making its

decision, and is not left to guess as to the factors on which the decisionmaker could have relied. Otherwise, the ordinary standard of review of plan action set forth by this Court in Firestone Tire and Rubber Co. v. Bruch, 489 U.S. 101, 109 S.Ct. 948, 103 L.Ed. 2d 80 (1989), would always be de novo.

The statutory requirement for specific and understandable reasons for the denial of benefits is in harmony with this Court's observation that "the validity of a claim to benefits under an ERISA plan is likely to turn on the interpretation of terms in the plan at issue." Firestone, 489 U.S. at 115. Thus, testing the validity of a claim for benefits requires an articulation of how the terms of the plan were interpreted by the decisionmaker. For this reason, five Circuit Courts agree that a

decisionmaker fails to meet the ERISA requirement by merely repeating terms of the plan as reasons for the denial of benefits, but not giving a basis for their interpretation. Weaver v. Phoenix Home Life Mut. Ins. Co., 990 F.2d 154 (4th Cir. 1993), Vanderklok v. Provident Life and Acc. Ins. Co., 956 F.2d 610 (6th Cir. 1992), Halpin, 962 F.2d 685 (7th Cir. 1992), Bernards v. United of Omaha Life Ins. Co., 987 F.2d 486 (8th Cir. 1993), and Taft v. Equitable Life Assurance Soc., 9 F.3d 1469 (9th Cir. 1994).

2. The contents of the ERISA Notice.

It is undisputed in the record that the stated reasons for the denial of Murphy's ITO application were contained in the ERISA Notice. The reasons were that the ITO Project Office considered Murphy a

valued employee with essential skills that IBM wanted to retain consistent with business needs and an employee necessary to the efficient operations of the business. It is also undisputed from the face of the Notice that the statement of reasons was fashioned from the ITO summary plan description. The essential issue in this case is whether the Notice met the ERISA requirement as a statement of specific and understandable reasons for the denial of her application.

3. The ERISA Notice contained bare conclusions, not reasons.

Standing alone, the statement of reasons in the ERISA Notice was nothing but a series of bare conclusions. The conclusions failed to state any factors on which the ITO Project Office relied in

denying Murphy's application. Rather, it spoke of "essential skills," "business needs," and "efficient operation of the business." These bare conclusions had no meaning without context and failed as an articulation of specific and understandable reasons for the interpretation of those terms.

4. The Second Circuit agreed that the ERISA Notice was deficient on its face.

Implicitly, the Second Circuit agreed that the ERISA Notice, standing alone, failed the ERISA requirement for specific and understandable reasons. The Second Circuit's agreement is evidenced by the holding that the Notice was sufficient in light of IBM's evaluations and the highly discretionary terms of the ITO plan. Appendix at A-8 to A-9. The holding,

therefore, went beyond the four corners of the Notice to supplement the insufficient statement of reasons.

In going beyond the four corners of the Notice, the Second Circuit affirmed the denial of Murphy's application based on factors on which the ITO Project Office could have relied (and in the face of a record that contained genuine issues of material fact as to the actual participation of the Project Office in the denial[1]). The Second Circuit's analysis

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1. The Second Circuit misapprehended the question of material fact in the record regarding the participation of the ITO Project Office in the denial of Murphy's application. Appendix at A-9 to A-10. The ERISA Notice stated that the Plan Administrator relied on the determination of the Project Office in denying the application. However, it is undisputed in the record that the established procedures were not followed with regard to Murphy's application as the Project Office never disapproved her application in writing. This raised a reasonable inference that the Project Office did not make such a

conflicts with the clear and established law in five Circuits that the failure to disclose the factors on which the decisionmaker did rely is a violation of 29 U.S.C. section 1133 and makes the plan action improper as a matter of law. Weaver, 990 F.2d 154, Vanderklok, 956 F.2d 610, Halpin, 962 F.2d 685, Bernards, 987 F.2d 486, and Taft, 9 F.3d 1469.

5. The Second Circuit's supplementing the insufficient statement of reasons in the ERISA Notice deprived Murphy of her statutory rights to full and fair review of the denial of her application.

By excusing the failure of the ERISA Notice to meet the ERISA requirement to

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determination. Thus, the Plan Administrator's denial which was based solely on a purported Project Office determination must necessarily be arbitrary and capricious.

provide in writing the specific and understandable reasons that did support the ITO Project Office's denial of Murphy's application and affirming the denial based on reasons on which the Project Office could have relied, the Second Circuit denied Murphy her statutory rights to full and fair review of the denial. Murphy was given no notice that a handful of dated evaluations formed the basis for the denial of her application. It is undisputed in the record that, although Murphy asked repeatedly during the administrative appeal and in discovery for specific and understandable reasons for the denial, IBM never stated that the ITO Project Office ever considered the evaluations, or even knew of their existence.[2] Thus, throughout

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2. IBM implicitly admitted that the handful of dated evaluations were not the reasons for the denial of Murphy's

this action, Murphy was unable to focus her challenge of the propriety of the denial of her application on any specific and understandable factor. Regardless of whether the Project Office did rely on the evaluations, the revelation at an appellate court of such reliance was not the kind of timely disclosure that preserved the right to full and fair review of the denial contemplated by the ERISA.

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application. Rather, it stated on brief that "the flattering testimonials, regardless of whether they were considered by the Plan Administrator, nevertheless support the [District] Court's determination that the Plan Administrator's finding that Murphy was an essential employee was neither arbitrary nor capricious." Brief for Defendant-Appellee at 31, n. 11, Murphy v. IBM, 23 F.3d 719 (2d Cir. 1994) (No. 93-9168). By arguing that the evaluations support the determination "regardless of whether they were considered," IBM argued about factors on which the ITO Project Office could have relied, rather than about factors on which the Project Office did rely.

B. The Second Circuit's holding raises as issue of great administrative importance that could affect millions of participants in ERISA plans.

1. ERISA plans in America today. It has been estimated that in 1989 there were 42.3 million active participants in private pension plans in the United States, which accounts for 46 percent of the private sector labor force. See Pension and Welfare Benefits Administration, U.S. Department of Labor, TRENDS IN PENSIONS 1992, p. 18-19 (U.S. Government Printing Office, 1992). There has been steady growth in the number of participants since ERISA's enactment twenty years ago, and there will likely be further growth in the number of participants if the proposed legislation regarding health care reform

becomes law.

Congress targeted these millions of participants (and millions more of their beneficiaries) for ERISA protection. A declared policy of ERISA is to protect the interests of such participants in employee welfare benefit plans and their beneficiaries by requiring disclosure and reporting to participants, by establishing standards of conduct, responsibility, and obligation for fiduciaries of plans, and by providing for appropriate remedies, sanctions, and ready access to the Federal courts. See 29 U.S.C. section 1001(b). To further this declared policy, Congress clearly provided for several ERISA disclosure requirements. One such requirement is the ERISA requirement for a written statement of the specific and understandable reasons for plan action at

29 U.S.C. section 1133, and is discussed above. Another disclosure requirement is that a summary plan description must be written in a manner calculated to be understood by the average plan participant and to reasonably apprise such participants of their rights and obligations under the plan. 29 U.S.C. section 1022. Also, Congress clearly provided for access to Federal courts for an aggrieved participant at 29 U.S.C. section 1132 to recover benefits due under the terms of a plan, and to enforce rights under the plan.

2. The contents of the ITO summary plan description and the ERISA Notice.

It is undisputed in the record that the ITO summary plan description granted to the Plan Administrator and to the ITO Project Offices the discretion to construe

the terms of and otherwise administer the plan. It is undisputed that the plan stated several times that managers had no power to approve or deny applications for benefits. Finally, it is undisputed that the ERISA Notice stated that Plan Administrator denied Murphy's application based on a determination made by the ITO Project Office.

3. The Second Circuit supplemented the ERISA Notice by relying on a determination made by IBM's management.

The Second Circuit went beyond the four corners of the ERISA Notice to hold that the Notice's statement of reasons was sufficient because of the discretion afforded "IBM's management" under the ITO summary plan description. Appendix at A-8 to A-9. The Second Circuit did not

identify who among IBM's management exercised any discretion in making a determination with regard to Murphy's application, or what were the reasons for the determination.

4. The Second Circuit's holding signals that ERISA rights can be undermined by careful drafting.

The Second Circuit's holding that the ERISA Notice's statement of reasons was sufficient because of the discretion afforded IBM's management under the ITO summary plan description raises an issue of great administrative importance. The Second Circuit in essence stated that an employer is not required to disclose the specific and understandable reasons for plan action if the plan action relates to the exercise of discretion reserved to the

employer under a plan. Effectively, a participant in the plan has no meaningful right to review the exercise of such discretion by the employer.

Several authorities testify against the validity of the Second Circuit's holding because of the serious administrative concerns that it promises if not reversed. First, the holding thwarts the clearly expressed right of millions of American workers to meaningful administrative and Federal court review of plan action. 29 U.S.C. sections 1132 and 1133. ERISA recognizes no plan action that is beyond review. While this right of review may pose a problem for a burdened Federal court docket, it is a right established in law and cannot be undermined by self-help drafting imposed on the participant by an employer.

Second, by affording extreme deference to IBM because it drafted the ITO summary plan description to reserve to itself highly discretionary authority, the Second Circuit ignored the counsel of this Court that a stricter standard of review is mandated in the case of plan action taken by an employer acting under a conflict of interest. Firestone, 489 U.S. at 115. Also Doe v. Group Hospitalization & Medical Services, 3 F.3d 80, 87, 88-89 (4th Cir. 1993), Taft, 9 F.3d 1469, and Duhon v. Texaco, 15 F.3d 1302 (5th Cir. 1994). It is undisputed in the record that any decision made by IBM's management was made under a conflict of interest. That is, ITO benefits were to be paid by IBM directly without resort to any special fund. Although Murphy formally raised the issue in writing before both the District Court

and the Second Circuit, neither court addressed the issue. Moreover, the Second Circuit implicitly rejected the argument that a conflict of interest requires a stricter Federal court review. Instead, it fully excused the ERISA Notice from its failure to provide specific and understandable reasons why IBM's management made its determination with regard to Murphy.

Third, and as argued above, the Second Circuit is in conflict with five Circuit Courts that insist the an ERISA notice meet the requirement for specific and understandable reasons for plan action in order to assure the right to meaningful administrative and Federal court review of plan action.

VII. CONCLUSION

Because the Second Circuit has decided an important question of Federal law in conflict with the plain ERISA requirement for specific and understandable reasons and in conflict with the established law in five Circuits, and because its holding will permit employers to thwart the rights of millions of ERISA participants to meaningful administrative and Federal court review of plan action, review by this Court is urgently required. The petition for a writ of certiorari should be granted.

Respectfully submitted.

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August 1994

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

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No. 1403 August Term, 1993

Argued: April 21, 1994 Decided:May 5, 1994

Docket No. 93-9168

KATHLEEN MURPHY,

Plaintiff-Appellant,

v.

INTERNATIONAL BUSINESS MACHINES CORPORATION,

Defendant-Appellee.

Before: OAKES, KEARSE, and MAHONEY, Circuit Judges.

Per Curiam:

Plaintiff Kathleen A. Murphy appeals from a final judgment of the United States District Court for the District of Connecticut, Alan H. Nevas, Judge, dismissing her complaint against defendant International Business Machines Corporation ("IBM") for denial of benefits under an employee-departure-incentive plan covered by the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1001 et seq. (1988). The district court, adopting the recommendation of Magistrate Judge Thomas P. Smith, granted IBM's motion for summary judgment on the ground that the denial of Murphy's application for benefits was not arbitrary or capricious. We affirm substantially for the reasons stated in Magistrate Judge Smith's Opinion dated

August 30, 1993, adopted by District Judge Nevas's endorsed order dated September 20, 1993.

In May 1991, IBM announced its offer of an ERISA-covered voluntary exit-incentive program called the Individual Transition Option ("ITO") program. The ITO Program Employee Information Package ("Employee Information Package") given to employees included a Summary Plan Description ("Plan Summary"), which stated that the purpose of the ITO plan was to reduce IBM's workforce while retaining those employees IBM deemed to have skills essential to the continued efficient functioning of its business. The Plan Summary stated that "[a]lthough an employee is eligible to be considered for the program, he or she is not automatically entitled to receive program benefits.

Based on business needs, requests will be approved for this program." The Employee Information Package reiterated that "[e]mployees who request to participate in the program are not automatically approved." (Id. at 10.) It stated that

> IBM, in its discretion, will be the sole determiner of when an employee's departure is acceptable to the business and reserves the right to not approve an employee's request if management determines that the employee is necessary to the efficient operation of the business.

(Id. at 5; see also id. at 13. ("ITO is a voluntary option for employees who are

approved by management. Approvals will be made in a variety of situations when an employee's departure will not significantly impact IBM's business objectives. . . .").)

Murphy was employed by IBM as an associate programmer from November 1987 until September 1991. In August 1991, she submitted her application for a resignation payment under the ITO plan. In the following week, while on vacation, Murphy telephoned her manager, who told her that her ITO application had been denied by the plan administrator earlier that week. After resigning from IBM in September 1991, Murphy renewed her request for an ITO payment. In July 1992, she received a letter from the plan administrator, again denying her request, stating that "[t]he ITO Program Project office in Kingston, New York, determined that you were necessary to

the efficient operation of the IBM business. Therefore under the provisions of the Summary Plan Description, you are not eligible for the ITO program."

Murphy commenced the present action in January 1993, contending that she was entitled to ITO benefits. In support of its motion for summary judgment, IBM's Statement of Undisputed Material Facts submitted pursuant to Local Rule 9(c) ("Rule 9(c) Statement") stated that during her tenure with IBM Murphy had been considered to be "an excellent performer," "an outstanding employee," and "a critical resource within IBM." Murphy did not submit an opposing statement pursuant to that Rule, and these evaluations were therefore admitted. See District of Connecticut Local Rule of Civil Procedure 9(c)1. Murphy nonetheless contends that

summary judgment dismissing her claim of entitlement to ITO benefits was inappropriate because there were questions of fact as to the scope of the decisionmaker's discretion, the identity of the person who denied her application, and the reasons for the denial. She also contends that she did not have adequate opportunity for discovery prior to consideration of IBM's motion for summary judgment and that the district court did not properly review the report of the magistrate judge who recommended the granting of the motion. All of her contentions lack merit.

Where an ERISA-covered benefit plan gives the plan administrator discretionary authority to determine eligibility for benefits, the administrator's decision will not be disturbed unless it is arbitrary and

capricious. See Reichelt v. Emhart Corp., 921 F.2d 425, 431 (2d Cir. 1990), cert. denied, 111 S.Ct. 2854 (1991); see generally Firestone Tire and Rubber Co. v. Bruch, 489 U.S. 101, 111 (1989). There can be no genuine issue here that the ITO plan administrator had such discretionary authority. As the Employee Information Package and Plan Summary expressly stated, an employee's application for ITO benefits did not entitle the employee to approval; rather the administrator had sole discretion to deny the application if the employee were deemed, in the discretion of IBM's management, to be necessary to IBM's business. The ITO administrator's decision to deny benefits must thus be upheld unless it was arbitrary and capricious. In light of the IBM evaluations of Murphy as an excellent and outstanding employee who was

"a critical resource within IBM," and the highly discretionary terms of the plan, the denial of benefits on the ground that Murphy had been determined to be necessary to IBM's business cannot be deemed arbitrary or capricious, and the statement of that rationale for the decision was sufficient.

We see no merit in Murphy's contention that there was a material question to be tried with respect to the identity of the person who denied her application. Arguing that the space on her application form where a decision would normally have been indicated remained blank, Murphy speculates that her manager, rather than the ITO administrator, denied her application. She does not deny, however, that she received the July 1992 letter from the ITO administrator

confirming that he denied her application for benefits and stating that the determination that Murphy was necessary to IBM's business had been made by the ITO Program Project Office. Nor did Murphy contradict IBM's assertion in its Rule 9(c) Statement that in August 1991, her manager informed her that the decision to deny her application had been made by the plan administrator. In the face of this evidence, the mere absence of an indication of any decision on Murphy's application form was insufficient to create a genuine issue of material fact as to the identity of the decisionmaker.

We also reject Murphy's procedural challenges to the granting of summary judgment. Though she contends that she a needed more discovery, she did not submit in the district court any affidavit

specifying why that was so, and the denial of additional discovery was not an abuse of discretion. See, e.g., Burlington Coat Factory Warehouse v. Esprit de Corp., 769 F.2d 919, 926 (2d Cir. 1985). Murphy's contention that the district judge did not properly consider her objections to the magistrate judge's report also lacks merit. The judge's brief order mentioned that objections had been made and overruled. We do not construe the brevity of the order as an indication that the objections were not given due consideration, especially in light of the correctness of that report and the evident lack of merit in Murphy's objections.

CONCLUSION

We have considered all of Murphy's contentions on this appeal and have found them to be without merit. The judgment of the district court is affirmed.

Normal costs to IBM; IBM's request for sanctions is denied.

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

KATHLEEN MURPHY,

- Plaintiff

v CIV. NO. 3:93-CV-175(AHN)

INTERNATIONAL BUSINESS

MACHINES CORPORATION,

- Defendant

ORDER

9/20/93. After review and over objection, the Magistrate Judge's Recommended Ruling is approved, adopted, and ratified. SO ORDERED.

ALAN H. NEVAS

UNITED STATES

DISTRICT JUDGE

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

KATHLEEN MURPHY,

-Plaintiff

v CIV. NO. 3:93-CV-175(AHN)

INTERNATIONAL BUSINESS

MACHINES CORPORATION,

-Defendant

MAGISTRATE JUDGE'S OPINION

Plaintiff in this action under the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1001 et seq., is a former employee of Defendant International Business Machines Corporation ("IBM"), who alleges, among other things, that she was denied benefits under a voluntary exit

incentive program. Pursuant to F.R.Civ.P. 56, Defendant has moved for summary judgment as to both counts of the Amended Complaint.

IBM employed Ms. Murphy as a programmer at its Danbury, Connecticut facility beginning in November 1987. Citing "staffing dynamics" and the "need to become more competitive and efficient," Defendant initiated an Individual Transition Option ("ITO") program in March 1991, offering a financial incentive to employees wishing to leave the company. In August 1991, after reviewing materials describing the plan, Plaintiff decided to participate, but her application was denied. One month later she chose to leave IBM, accepting a job offer from a competing software firm.

Plaintiff initially argues Defendant's

motion is premature since she has not had "adequate" time for discovery. Memorandum in Opposition (Filing 30) at 11. Rule 56(a), however, specifically permits a motion for summary judgment to be filed "at any time after the expiration of 20 days from the commencement of the action. . . ."

Subsection (f) of Rule 56, which Plaintiff has not cited, permits postponing the disposition of a pending motion or denial of the motion if a party "cannot for reasons stated present by affidavit facts essential to justify the party's opposition. . . ." F.R.Civ.P. 56(f). Also, the final clause of subsection (f) clearly grants the court discretion in allowing time for additional discovery. Plaintiff has neither moved for postponement as contemplated by Rule 56(f), nor demonstrated by affidavit, as required

by the Rule, that she is unable to present facts "justify[ing her] opposition" to the present motion. See Hudson River Sloop Clearwater v. Department of Navy, 891 F.2d 414, 422 (2d Cir. 1989).

Plaintiff also contends that "genuine issues of material fact" preclude granting Defendant's motion. The following explication of the "applicable law" is set forth in her memorandum:

> This case requires this Court [sic] to construe the ITO terms. Generally, the determination whether a term in an ERISA plan is ambiguous is a matter of law. . . Choosing from between reasonable alternative interpretations raises a question of fact.

Memorandum in opposition (Filing 30) at 12-13. Unfortunately, this case does not require construction of the ITO terms. The same argument was made, and rejected, in Schwartz v. Newsweek, Inc.:

> [Plaintiffs] argue that, precisely because Section X is ambiguous, a material issue of fact as to Newsweek's severance policies exists and summary judgment was improper. We disagree. Under ERISA, the issue is not the precise meaning of the Manual but whether Newsweek's denial of severance benefits was arbitrary and capricious.

Schwartz, 827 F.2d 879, 882 (2d Cir.

1987).[1]

Which brings us to Plaintiff's third argument: uncertainty as to the proper standard of review. It is clear that under Firestone Tire and Rubber Co. v. Bruch, 489 U.S. 101 (1989), where an ERISA-governed plan administrator is granted discretion in determining benefits under the plan, an "arbitrary and capricious" standard of review applies. Firestone, 489 U.S. at 114.

Remarkably, Plaintiff admits that acceptance of ITO applications was discretionary, and that merely satisfying

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1. Plaintiff also attempts to raise a material issue of fact regarding the probative value of testimonials relied upon by IBM in determining Ms. Murphy's value to the company. As discussed infra, the correct analysis is not whether these evaluations of Plaintiff's job performance were objectively trustworthy, but whether they could form the basis for a decision that passes an "arbitrary and capricious" standard of review.

objective criteria for possible inclusion in the plan did not insure participation. See Memorandum in Support (Filing 19), Exh. B (Deposition of Kathleen Murphy), at 61-62, 66-70.

It is apparent that, in light of Plaintiff's acknowledgement that ITO acceptance was discretionary, the gravamen of her claim is simply that the decision as to her application vas "incorrect." Plaintiff's insistence that the ITO lacked "objective standards" by which an admittedly discretionary decision was to be reached is both illogical and fails to demonstrate that Defendant's denial of her ITO benefits was arbitrary and capricious.

The following language appeared in the Summary Plan Description of the ITO, a document reviewed by Plaintiff prior to her application:

ELIGIBILITY FOR PARTICIPATION IN THE PROGRAM

Management will establish "functions" within IBM. Within each function, management will group similar skills together into "families" creating a functional skill family. Based on these business decisions, management will decide which functional skill families are eligible to participate in the program. . . . Management may deem a functional skill family ineligible for the program. Employees who have participated in previous exit incentive programs are not eligible to participate in the ITO Program.

> Although an employee is eligible to be considered for the program, he or she is not automatically entitled to receive program benefits. Based on business needs, requests will be approved for this program.

See Memorandum in Support, Exh. A at 4. (emphasis added)

> IBM, in its discretion, will be the sole determiner of when an employee's departure is acceptable to the business and reserves the right to not approve an employee's request if management determines that the employee is necessary to the efficient operation of the

business.

Id. at 5.

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. . . .

Employees who request to participate in the program are not automatically approved to receive the payment with or without the Five Year Pre-Retirement Leave of Absence. The ITO Program Project Office will make the final determination of which employees are approved for the program.

Id. at 10 (emphasis added).

INDIVIDUAL TRANSITION OPTION QUESTION AND ANSWERS

. . . .

Q. How does the ITO differ from VTPP?

A. VTPP participation is initiated by employees, and eligibility to receive the payment is based on several factors, such as skill and seniority. ITO in a voluntary option for employees who are approved by management. Approvals will be made in a variety of situations when an employee's departure will not significantly impact IBM's business objectives . . . .

Id. at 13.

It is unavailing, given this language for Plaintiff to argue that Defendant has not "offered any standards" or defined key ITO terms, such as "strong business need" or "essential skill." Assuming Plaintiff could define these and other terms so as to make her application appear more favorable, it was entirely within IBM's discretion to interpret the language of the ITO as it did, and deny her application based on that interpretation. See Schwartz, 827 F.2d at 883, citing Gordon v. ILWU-PMA Benefit Funds, 616 F.2d 433, 439 (9th Cir. 1980) (where provisions of document governing plan "are susceptible to more than one reasonable interpretation, the court may not substitute its judgment for that of the [fiduciary]").

Plaintiff states in her memorandum that she intends "to show [at trial] that the ITO is ambiguous as a matter of law and that her interpretation of the ITO is the proper one." Memorandum in Opposition at 18. This is simply irrelevant to whether IBM's decision violated ERISA. Having failed to produce any evidence tending to demonstrate that Defendant's decision regarding Ms. Murphy's ITO application was arbitrary or capricious, the pending motion should be granted as to Count One.

Plaintiff has also failed to sufficiently support her "estoppel" claim asserted in Count Two.[2] The terms of the

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2. The magistrate judge notes considerable difficulty in discerning the cause of action alleged in Count Two. Count One is also barely sufficient to meet the liberal pleading requirements of the Federal Rules, omitting as it does any jurisdictional statement and failing to directly allege Defendants violated ERISA.

ITO, as set forth in the plan description, satisfied the disclosure requirements of ERISA and clearly indicated benefits would not automatically be approved. It was not reasonable for Ms. Murphy to have believed otherwise. There is also no proof that Plaintiff detrimentally relied on her misunderstanding.

After careful and thorough review of the competing memoranda and related materials, it is apparent that there are no genuine issues of material fact, and that Defendant is entitled to judgment on the Amended Complaint. F.R.Civ.P. 56; Celotex Corp. v. Catrett, 477 U.S. 316, 322 (1986).

IBM has also moved for sanctions pursuant to F.R.Civ.P. 11, labelling certain of Plaintiff's claims as "preposterous" and "reprehensible," see Memorandum in Support (Filing 19) at 10-11,

and asserting that "no competent attorney who has read the ITO. . . would believe [ ] that each employee who applied was automatically entitled to receive the program benefits. Id. at 22.

It is true that the undisputed facts, once unearthed, provide no support whatsoever for Ms. Murphy's claims. And, the arguments set forth in Plaintiff's memoranda not only are unpersuasive, but betray a fundamentally flawed and erroneous analysis of the legal issues and underlying facts relevant to Defendant's motion. But, reading the Amended Complaint on its face, it is not "patently clear" that Plaintiff's claims have "absolutely no chance of success." See Eastway Const. Corp. v. City of New York, 762 F.2d 243, 254 (2d Cir. 1985). It is patently clear, however, that Plaintiff has failed to make the requisite

showing under Rule 56 to prevent Defendant from prevailing as to both counts.

Nor does it appear that the present action was brought for any "improper purpose." See F.R.Civ.P. 11. Admittedly Defendant's revelation that Plaintiff's counsel is also her brother, see Reply Memorandum (Filing 32) at 5, is somewhat troubling, for it suggests that Plaintiff's counsel may have been willing to pursue a substantially unjustified claim for a family member, and may have viewed the factual predicate for this action in a less-than-objective light. While there is nothing unethical in representing a close relative, where an attorney's professional judgment in evaluating a potential civil claim involving a family member is compromised, either consciously or unconsciously, Rule 11's objective

standards are offended and an award of sanctions is mandatory.

After carefully reviewing the present record, and resolving in plaintiff's favor the reasonable doubts this record has provoked, the magistrate judge finds that Rule 11 sanctions are not appropriate. However, as contemplated by statute and the Local Rules for United States Magistrate Judges, IBM is free to seek de novo review from an Article III judge.

Plaintiff may seek similar review regarding the dispositive portions of Defendant's motion.

Based on the above, Defendant's motion for summary judgment should be granted. The magistrate judge does not, however, recommend imposition of sanctions pursuant to Rule 11.

Dated at Hartford, Connecticut, this 30th day of August, 1993.

THOMAS P. SMITH

U.S. MAGISTRATE JUDGE